(1) S.B. CIVIL MISC. APPEAL NO.1719/2007
(Smt.Lachhu Bai Vs. Dala Ram & ors.)

(2) S.B. CIVIL MISC. APPEAL NO.1718/2007
(Smt.Lachhu Bai Vs. Dala Ram & ors.)

(3) S.B. CIVIL MISC. APPEAL NO.1717/2007
(Smt.Lachhu Bai & ors. Vs. Dala Ram & ors.)

Date of Order :: 30th July 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Rajesh Shah for the appellants

Having heard learned counsel for the claimants-appellants and having examined the impugned common award dated 20.02.2007 made by the Motor Accidents Claims Tribunal, Sirohi in three claim cases relating to the same accident and involving the members of same family, this Court is satisfied that these appeals for enhancement over the amount of compensation awarded by the Tribunal do not merit admission; and hence are taken up for disposal by this common order.

In the unfortunate vehicular accident that occurred on 01.09.2005, the appellant Smt.Lachhu Bai lost to the fatal injuries her son Puna Ram, son's wife Panku Devi, and son's son Vishal; and thus were submitted three separate claim

applications. In claim case No.4/2006, the appellant sought compensation for accidental death of her daughter-in-law Panku Devi with the submissions that the victim was 27 years of age and was earning about Rs.48,000/-per annum in her tailoring job. In claim case No.5/2006, the appellant sought compensation for accidental death of her 3 years old grandson Vishal. In claim case No.6/2006, the appellants, mother and sisters of the victim Puna Ram, sought compensation with the submissions that the deceased was about 31 years of age and was engaged in cutlery business at Pune earning about Rs.80,000/- per annum.

By the impugned common award dated 20.02.2007, the Tribunal has proceeded to decide the aforesaid three claim cases together; and after finding the accident to have occurred for rash and negligent driving of the offending truck bearing registration No.RJ 04 G 1163, has held the driver, owner and insurer of the said truck liable for compensation.

For quantification of compensation in claim case No.4/2006, the Tribunal has noticed that while the claimant suggested in the claim application that her deceased daughter-in-law was earning in tailoring job but in her deposition stated that the victim was earning Rs.4,000/- per month by vegetable vending. With the finding that the claimant has failed to establish independent earning of the

victim by any cogent evidence, the Tribunal has put an estimate on the income of the victim at Rs.2,400/- per month; and after deducting one-third wherefrom has taken loss of contribution for the claimant at Rs.1,600/- per month i.e., Rs.19,200/- per annum; and with application of multiplier of 11 after noticing the age of the claimant at 48 years, has assessed pecuniary loss at Rs.2,11,200/-. The Tribunal has further allowed Rs.5,000/- towards non-pecuniary loss, Rs.10,000/- towards funeral expenses and Rs.1,000/- towards transportation and in this manner has assessed total loss for the claimant at Rs.2,27,200/-.

In claim case No.5/2006, the Tribunal has taken notional income of 3 years old Vishal at Rs.15,000/- per annum; and assuming loss of contribution for the claimant (grandmother) at Rs.10,000/- per annum, and with application of multiplier of 13, has assessed pecuniary loss at Rs.1,30,000/-. Again, while allowing Rs.5,000/- towards non-pecuniary loss, Rs.10,000/- towards funeral expenses and Rs. 1,000/- towards transportation, the Tribunal has assessed total loss for the claimant in this case at Rs. 1,46,000/-.

In claim case No.6/2006 relating to the victim Puna Ram (31 years of age), the Tribunal has noticed that though the claimant asserted that her deceased son was earning about Rs.80,000/- per annum in cutlery business but then she

expressed ignorance if he was filing income tax returns. The Tribunal has referred to the statement of P.W.2 Gopa Ram in relation to income tax returns of the deceased for the years 2003-04 and 2004-05 (Ex.17&18 respectively). The said witness appears to be the brother of the claimant Smt.Lachhu Bai, and has admitted that the amount of Rs.21,600/- shown in the income tax return Ex.17 was that of annual salary and therein, no income from business was shown. The witness further stated that the deceased Puna Ram was transporting goods in a tempo and was earning commission income.

The Tribunal has noticed contradictions in the statements of the witnesses about the source of income of the deceased Puna Ram, and has also noticed that in the return Ex.17, income of the deceased was shown at Rs.40,703/- comprising of Rs.21,600/- from salary and Rs.19,103/- from other sources. The Tribunal has also noticed that in the return Ex.18, salary income of the deceased was shown at Rs.1,800/-, business or profession income at Rs.50,000/-, and from other sources at Rs.24,048/-; and has also observed that both the returns were filed on the same day, i.e. 01.08.2005. In the overall view of evidence, particularly looking to uncertainty about the source of income, the Tribunal has observed that income of the deceased cannot be assessed on the basis of the documents Ex.17 and Ex.18, and

instead, has considered it appropriate to put an estimate on his income at Rs.3,000/- per month.

The Tribunal has further found that the claimants were the mother and married sisters of the victim; and has observed that married sisters were not directly dependent on the deceased nor were his legal representatives. In the overall circumstances of the case, the Tribunal has considered it appropriate to allow compensation towards pecuniary loss only for the mother claimant; and in view of her age at 48 years, with application of multiplier of 13 to the multiplicand taken at Rs.2,000/- per month, i.e. Rs.24,000/- per annum, has assessed pecuniary loss at Rs.3,12,000/-. The Tribunal has further allowed Rs.10,000/- towards funeral expenses, Rs.2,000/- towards transportation and Rs.25,000/- towards non-pecuniary loss of the claimants; and in this manner has calculated their total loss at Rs.3,49,000/-.

In each of the three claim cases, the Tribunal has allowed interest at the rate of 7.5% per annum from the date of filing of claim application.

So far the case relating to the death of daughter-in-law of the claimant is concerned, the Tribunal has erred, if at all, in favour of the claimant and not against her. It is apparent on the face of record that the claimant has suggested independent earnings of the deceased in a haphazard

manner only in order to claim excessive compensation. While in the claim application the victim was suggested to be earning in her tailoring job; on the other hand, in oral evidence before the Tribunal, her source of income was stated to be that of vegetable vending. There is no corroborative evidence on record to find if the deceased was at all earning independently. Yet the Tribunal has taken a rather liberal view of the matter and has put a higher side estimate on the income of the deceased at Rs.2,400/- per month. Then, in view of the family set up, it cannot be said that after deducting one-third on personal expenditure of the deceased, entire of two-third of such estimated income ought to be taken as loss of contribution for the claimant, mother-in-law of the deceased. In the family set up, obviously the component of dependency of the claimant would stand much lower than two-third of the assumed income of the victim. The Tribunal has further allowed excessive amount of Rs.10,000/- towards funeral expenses. In the ultimate analysis, the amount of Rs.2,27,200/- as allowed in claim case No.4/2006 could only be said to be rather excessive; and rules out any scope for enhancement. CMA No.1719/2007 related with Claim Case No.4/2006, therefore, deserves to be dismissed.

So far the victim Vishal, 3 years old grand son of the claimant is concerned, the Tribunal has again liberally allowed

in all a sum of Rs.1,46,000/- towards compensation. In relation to child victim, such an amount for his grand mother could only be said to be rather excessive and again rules out any scope for enhancement. Learned counsel for the appellant contended that the deceased was the hope of future in the family and would have extended the business being run by his father and in the circumstances of the case, the amount of compensation allowed by the Tribunal remains on the lower side. The submissions related more with imponderables cannot be accepted. In the case of child victim, in relation to his grand mother, about 48 years of age, the amount of compensation at Rs.1,46,000/- could only be said to be on the higher side. Even when calculated on the basis of notional income, it cannot be said that entire of two-third of notional income could be taken towards loss of contribution for the claimant. CMA No.1718/2007 related with Claim Case No.5/2006 also deserves to be dismissed.

In Claim Case No.6/2006 relating to the son of the claimant, the Tribunal has examined and analysed the entire evidence in sufficient detail and has again found a fundamental contradiction regarding the source of income of the victim particularly when the claimant-mother stated that he was earning in cutlery business whereas her brother stated that the victim was earning commission income while

transporting goods and plying a tempo. Having regard to the circumstances of the case, the Tribunal cannot be said to have erred in not relying on the returns Ex.17 and Ex.18 for the purpose of estimate on the income of the deceased. Yet in the present case too, the Tribunal has taken a liberal and sympathetic view of the matter and has put an estimate on the income of the victim at Rs.3,000/- per month and again has taken two-third of such estimated income towards loss of dependency for the claimant-mother; and with application of maximum side multiplier of 13 has assessed pecuniary loss at Rs.3,12,000/-. In the context of family set up, such estimate put by the Tribunal on loss of dependency for the mother of the victim at Rs.2,000/- per month, i.e., Rs.24,000/- per annum, cannot be said to be low or insufficient from any stand point. Even if income of the victim was to be estimated higher than Rs.3,000/- per month, this Court is clearly of opinion that in relation to claimant mother, loss of contribution cannot be taken more than Rs.24,000/- per annum. The Tribunal has allowed Rs.10,000/- towards funeral expenses and further Rs.25,000/- towards non-pecuniary loss for all the claimants. The amount of compensation awarded in this case to the tune of Rs.3,49,000/- cannot be said to be inadequate; and rules out any scope for enhancement. CMA No.1717/2007 related with Claim Case No.6/2006 also deserves to be

dismissed.

It has been repeatedly argued by learned counsel for the appellant that the claimant Smt.Lachhu Bai has suffered serious set back for her only son, daughter-in-law and grand son having perished in the accident and with the kind of misfortune befalling the family and with no male member remaining for earning purposes, the amount of compensation stands on the lower side. In the context of the impugned award, the submissions so made on behalf of the appellant, appear to be rather misplaced. In the fact situation of the present cases, despite there being contradictions in the evidence on material particulars, the Tribunal has already taken a reasonably sympathetic view of the matter and has made the award in each case rather on the higher side as compared to the factor of dependency of the claimant.

It is further noticed that the Tribunal has allowed interest at the rate of 7.5% per annum from the date of fling of claim application; and such rate of interest in the award made on 20.02.2007 is also on the higher side. There does not appear any scope for enhancement in these cases.

The appeals fail and are, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Rajesh Shah for the appellants

Appeal is dismissed vide order made in S.B.Civil Misc. Appeal No.1719/2007 (Smt.Lachhu Bai Vs. Dala Ram & others).

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